मा. सर्वोच्च न्यायालयाने रिट याचिका (सिव्हील) क्र. २९५/२०२२ व अपील क्र.१४६०४/२०२४ या प्रकरणांमध्ये दि. १३.११.२०२४ व दि. १७.१२.२०२४ रोजी दिलेल्या निर्देशांचे काटेकोरपणे पालन करणेबाबत...

महाराष्ट्र शासन

महसूल व वन विभाग

शासन परिपत्रक क्रमांक : संकीर्ण-२०२५/प्र.क्र. १९ /म-६

मदाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय,मुंबई-४०० ०३२.
दिनांक : २५ एप्रिल, २०२५.

वाचा :- मा. सर्वोच्च न्यायालयाचे रिट याचिका (सिव्हील) क्र. २९५/२०२२ तसेच सिव्हील अपील क्र.१४६०४/२०२४ व १४६०५/२०२४ प्रकरणी दि. १३.११.२०२४ व दि. १७.१२.२०२४ रोजीचे आदेश.

<u>प्रस्तावना</u> :-

मा. सर्वोच्च न्यायालय, नवी दिल्ली येथे दाखल रिट याचिका (सिव्हील) क्र. २९५/२०२२ व इतर २ तसेच, सिव्हील अपील क्र.१४६०४/२०२४ व १४६०५/२०२४ श्री. राजेंद्रकुमार बडजात्या व इतर विरुध्द युपी आवास एवं विकास परिषद तसेच, राजीव गुप्ता व इतर विरूध्द युपी आवास एवं विकास परिषद या याचिकांमध्ये सर्वोच्च न्यायालयाने अनधिकृत बांधकामांच्या अनुषंगाने अनुक्रमे दि. १३.११.२०२४ व दि. १७.१२.२०२४ रोजी आदेश पारीत केले आहेत. मा. सर्वोच्च न्यायालयाने सदर आदेश पारीत करताना अनधिकृत बांधकाम निष्कासित करण्याच्या अनुषंगाने नोंदविलेली निरीक्षणे जिल्हा दंडाधिकारी यांच्यामार्फत सर्व संबंधित नियोजन प्राधिकरणांच्या निदर्शनास आणून देण्याबाबत निर्देश दिलेले आहेत. त्या अनुषंगाने समक्रमांकाचे दि. २३.०४.२०२५ चे परिपत्रक अधिक्रमित करुन सुधारीत सुचना खालीलप्रमाणे देण्यात येत आहेत.

<u>शासन परिपत्रक</u> :-

अ) मा. सर्वोच्च न्यायालय, नवी दिल्ली येथे दाखल रिट याचिका (सिव्हील) क्र. २९५/२०२२ व इतर २ मध्ये अनधिकृत बांधकाम निष्कासित करण्याच्या अनुषंगाने दि. १३.११.२०२४ रोजीच्या आदेशामधील परि. क्र. ९० ते ९४ मध्ये नोंदविलेली निरीक्षणे पुढीलप्रमाणे :-

90. *In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.*

91. *At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.*

A. NOTICE

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

v. The notice shall contain the details regarding:

a. the nature of the unauthorized construction.

b. the details of the specific violation and the grounds of demolition.

c. a list of documents that the notice is required to furnish along with his reply.

d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;

vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.

B. PERSONAL HEARING

i. The designated authority shall give an opportunity of personal hearing to the person concerned.

ii. The minutes of such a hearing shall also be recorded.

C. FINAL ORDER

i. Upon hearing, the designated authority shall pass a final order.

ii. The final order shall contain:

a. the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;
b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;
c. if the designated authority finds that only part of the construction is unauthorized/non-compoundable, then the details thereof.
d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.

i. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.

ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorized construction, and if the same is not stayed by any appellate authority or a court, the concerned authority shall take steps to demolish the same. It is only such construction which is found to be unauthorized and not compoundable shall be demolished.

iii) Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

E. PROCEEDINGS OF DEMOLITION

i. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

ii. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

92. *Needless to state that the authorities hereinafter shall strictly comply with the aforesaid directions issued by us.*

93. *It will also be informed that violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution.*

94. *The officials should also be informed that if the demolition is found to be in violation of the orders of this Court, the officer/officers concerned will be held responsible for restitution of the demolished property at his/their personal cost in addition to payment of damages.*

ब) मा. सर्वोच्च न्यायालय, नवी दिल्ली येथे दाखल सिव्हील अपील क्र.१४६०४/२०२४ व १४६०५/२०२४ (श्री. राजेंद्रकुमार बडजात्या व इतर विरुध्द युपी आवास एवं विकास परिषद तसेच, राजीव गुप्ता व इतर विरूध्द युपी आवास एवं विकास परिषद) या याचिकांमध्ये सर्वोच्च न्यायालयाने दि. १७.१२.२०२४ रोजीच्या आदेशान्वये अनधिकृत बांधकाम निष्कासित करण्याच्या अनुषंगाने परि. क्र. २१ मध्ये नोंदविलेली निरीक्षणे व दिलेले निर्देश पुढीलप्रमाणे :-

21. Therefore, in the larger public interest, we are inclined to issue the following directions, in addition to the directives issued by this Court in Redirections in the matter of demolition of structures (supra):

(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.

(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.

(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider/ Board to the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation/violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder/owner/occupant; and the official, who is responsible for issuance of wrongful completion /occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission licence to conduct any business/trade must be given by any authorities including local bodies of States Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.

(viii) Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.

(ix) In the event of any application / appeal / revision being filed by the owner or builder against the non-issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the authority concerned, including the pending appeals/revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.

(x) If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal Courts relating to house / building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.

(xi) Banks/financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.

(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws.

०२. वरील मा. सर्वोच्च न्यायालयाच्या निर्देशांच्या अनुषंगाने, जिल्हाधिकारी तथा जिल्हा दंडाधिकारी यांना निर्देश देण्यात येतात की, त्यांनी मा. सर्वोच्च न्यायालयाने दिलेल्या निर्देशांचे काटेकोर पालन करावे. तसेच, त्यांच्या अधिनस्त येणाऱ्या नियोजन प्राधिकाऱ्यांना सदर निर्देशांची पूर्णपणे अंमलबजावणी करण्याबाबत त्यांच्या स्तरावरून कळविण्यात यावे. निर्देशांचे पालन न करणाऱ्या अधिकाऱ्यांविरुध्द कायदेशीर कारवाई करण्यात येईल.

सदर शासन परिपत्रक महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेताक २०२५०४२५१७३४४०३९१९ असा आहे. हा आदेश डिजीटल स्वाक्षरीने साक्षांकित करुन काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

DR.SHWETA SAWDEKAR BAIG

Digitally signed by DR.SHWETA SAWDEKAR BAIG
DN: c=IN, o=GOVERNMENT OF MAHARASHTRA, ou=REVENUE AND FOREST DEPARTMENT,
2.5.4.20=6281ac1913ceb1456ffcfd8e5d3dbe032cfa746426763d6351cb898b72986801, postalCode=400032, st=Maharashtra, serialNumber=2FA86D3D30D0DE896CC35E8F420B067861B1ECA1D14FF010A5202C61E6ADC6FE, cn=DR.SHWETA SAWDEKAR BAIG
Date: 2025.04.25 17:36:16 +05'30'

(डॉ. श्वेता सावदेकर-बेग)
कक्ष अधिकारी, महाराष्ट्र शासन

प्रति,

सर्व जिल्हाधिकारी.

प्रत,

१) मा.राज्यपाल,महाराष्ट्र राज्य यांचे सचिव, राजभवन,मलबार हिल,मुंबई.
२) मा.मुख्यमंत्री यांचे प्रधान सचिव,मंत्रालय,मुंबई-३२.
३) मा. उपमुख्यमंत्री (नगर विकास) यांचे खाजगी सचिव, मंत्रालय, मुंबई.
४) मा. उपमुख्यमंत्री (वित्त) यांचे खाजगी सचिव, मंत्रालय, मुंबई.
५) मा.मंत्री (महसूल), यांचे खाजगी सचिव, मंत्रालय,मुंबई.
६) मा.राज्यमंत्री (महसूल), यांचे खाजगी सचिव, मंत्रालय,मुंबई.
७) मा.मुख्य सचिव, महाराष्ट्र राज्य, मंत्रालय,मुंबई-३२.
८) प्रधान सचिव (विधी व परामर्शी), विधी व न्याय विभाग, मंत्रालय, मुंबई.
९) अपर मुख्य सचिव,(महसूल) महसूल व वन विभाग याचे स्वीय सहायक.
१०) जमाबंदी आयुक्त आणि संचालक,भूमी अभिलेख,पुणे.
११) सर्व विभागीय आयुक्त.
१२) सर्व सहसचिव/उपसचिव, महसूल व वन विभाग, मंत्रालय,मुंबई.
१३) सर्व "ज " समूह कार्यासन, महसूल व वन विभाग, मंत्रालय,मुंबई.
१४) निवड नस्ती (कार्यासन म-६)